IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1549 OF 1994

1. Kalwan Education Society
Kalwan, Nasik

2. Khanderao Dada Patil
Chairman, Kalwan Education Society
Nasik

3. The Principal
RKM Secondary and High Secondary
School, Kalwan, Nasik ... Petitioners

V/s.

Prakash Krushnakant Dunbale
r/o.New Cidco, Shanti Nagar
Nasik - 422 009 ... Respondent

Mr.P.N. Karlekar for Petitioners

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **JULY 7, 2005**

ORAL JUDGMENT:

. This petition impugns the order of the School Tribunal, Nasik. It is the case of the Petitioners that they had appointed the respondent as a lecturer in their higher secondary school at Kalwan w.e.f. 27.6.1988 on a purely temporary basis. The services of the respondent were terminated on 16.4.1991 as he did not possess the requisite qualifications. Furthermore, although the respondent was a scheduled caste employee, he was appointed against vacancy for a scheduled tribe

candidate.

2. Aggrieved by this order, the respondent approached the School Tribunal, Nasik under section 9(1) of the Maharashtra Employees of Private Schools Act 1977 and the Rules framed thereunder. According to him, he was appointed on a clear vacancy and was in continuous service. Since there was a delay in filing the appeal, the respondent also filed an application for condoning the delay. The Petitioners filed their written statement contending that the Petitioners had appointed the respondent against a leave vacancy and not against a clear vacancy and that, therefore, the respondent-employee was not entitled to be continued in service. It was also contended that the respondent did not have the requisite qualifications since he did not possess the B.Ed. degree and, therefore, could not continue in the post of lecturer.

3. The Tribunal on a consideration of pleadings and the evidence recorded, found that the Petitioners had illegally terminated the services of the respondent. It is this order which is impugned in the present petition.

4. Mr.Karlekar for the Petitioners submits that the dispute was heard ex-parte and, therefore, the

Petitioners were not given opportunity of hearing in the matter before the Tribunal. It is also submitted on behalf of the Petitioners that the respondent being a Scheduled Caste candidate, he could not claim permanency or work in a post reserved for the Scheduled Tribe candidate and, therefore, he was not entitled to be continued in service. It is further contended that he is not qualified to hold the post of lecturer as he does not possess the B.Ed degree.

5. It does appear that the Petitioners were not given any opportunity to remain present when the matter was heard by the Tribunal. There is no reply filed in this Court by the respondent denying the averments made in the Petition to that effect. Therefore, it would be appropriate to set aside the impugned order and remand the matter to the School Tribunal. However, in the present case, remanding the matter would not serve any purpose as the Petitioners have filed an affidavit in this Court to which a letter received from the Principal of Mahatma Gandhi Vidyamandir's Arts & Commerce College, Nasik is annexed. This letter indicates that the respondent has been employed with them from 7.8.1992 as a lecturer.

6. In these circumstances, the order of the School

Tribunal is set aside. Rule made absolute accordingly. No order as to costs.